No. 15,808

IN THE

United States Court of Appeals

For the Ninth Circuit

THOMAS R. LILE,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the District Court of the United States for the District of Alaska, Fourth Judicial Division.

BRIEF FOR APPELLEE.

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home in Los Angeles, California. Subsequently Thomas B. Morgan returned to Whiles' home with Paul Ferguson. Thereafter on the 8th or 9th of August, 1954, Thomas B. Morgan, John David Whiles and Paul Ferguson left Los Angeles, California, for Alaska (TR 90). Prior to their departure, Morgan had purchased a 1950 Nash automobile for the anticipated trip to Alaska (TR 187). At the time of purchase of the 1950 Nash, Appellant, Thomas R. Lile, gave Morgan $500.00 (TR 74, 188). Morgan, Ferguson and Whiles then proceeded to drive to Yosemite National Park where Whiles saw Lile (TR 91). At Yosemite, Morgan received an additional $100.00 from Lile to pay for the trip to Alaska (TR 189). Morgan, Ferguson, and Whiles then left Yosemite and drove up the Alcan Highway to Fairbanks, Alaska (TR 191).

Morgan, Ferguson and Whiles arrived in Fairbanks, Alaska, on the 15th or 16th of August, 1954 (TR 91). During the next two days they attempted to locate a certain pickup truck but were unsucessful in their efforts. Morgan then called Lile and informed him that they could not locate the pickup truck. Before noon on the 18th of August, 1954, Morgan and Ferguson returned to the quarters where they had been staying in Fairbanks and at this time Ferguson showed Whiles two trays of diamond rings which he had under his shirt (TR 92, 100). When questioned by Whiles as to where they had obtained the diamond rings, Morgan and Ferguson stated they had gotten them down on the corner. Later that day when asked

by Whiles whether it was the jewelry store on the corner of Noble and Third (Maddux's Jewelry Store) they told Whiles that was the store from which they had gotten the diamonds (TR 93).

During the evening of the 18th of August, 1954, while Whiles accompanied Ferguson to the Fairbanks Post Office, Ferguson threw the boxes which had contained the diamond rings on top of a building (TR 94). Morgan had previously strung the rings on a piece of twine (TR 95). On May 6, 1955, Donald T. Sullivan, Special Agent for the FBI, recovered the empty ring boxes from the roof of the building (TR 147, 149, 150). In the evening of August 20, 1954, Douglas O. Maddux, a Fairbanks jeweler, discovered that two boxes containing more than 83 individual rings (wedding bands, engagement rings and dinner rings) or 40 sets of rings, having a retail value of a "good $8000.00" were missing from his store and thereupon called the police (TR 13, 16, 17). On August 19, 1954, Morgan and Ferguson were seen together in a store in Fairbanks owned by Robert Claus (TR 156). On August 21, 1954, Morgan, Ferguson and Whiles left Fairbanks, Alaska, at 10:00 a.m. on a Pan American flight to Seattle, Washington (TR 95, 179, 193). Morgan had hung the rings inside of the trousers he was wearing and carried them out of Fairbanks to Seattle in this manner (TR 95). While in Fairbanks Morgan sent a telegram to Lile in San Francisco asking for $400.00 (TR 75).

Upon their arrival in Seattle, Morgan, Ferguson and Whiles checked into a hotel; Morgan and Fer-

guson occupied a room together. While present in the room occupied by Morgan and Ferguson, Whiles observed Morgan put the stolen rings into an old plastic electric shaver box. Morgan stated to Ferguson and Whiles that he was going to ship the shaving box containing the rings to Lile (TR 95). Morgan then prepared the shaving box for mailing. On the day after their arrival in Seattle, they rented a car to drive to San Francisco, California. As they were driving out of Seattle, Morgan went into a post office (TR 56, 96, 203). During the period they were in Seattle, Morgan called Lile stating to Lile that he wanted $400.00 and that jewelry had been sent to Lile (TR 75). Before leaving Seattle, Morgan received in Seattle a communication from Lile (TR 206). Under a fictitious name, Lile had wired, by Western Union, $400.00 to Morgan in Seattle (TR 75, 206).

Upon their arrival in San Francisco, Morgan, Ferguson and Whiles turned in the car they had rented and then flew to Los Angeles, California (TR 96, 204).

Some three to five days after they had arrived in Los Angeles, California, Ferguson asked Whiles to go to Morgan's home, in Los Angeles, to pick up the rings. When Whiles and Ferguson arrived at Morgan's home, Lile was also present. Lile then went and got the rings and gave them to Morgan who in turn gave the rings to Whiles (TR 96). Before leaving Morgan's house, Morgan took one of the rings for his wife and Whiles took a cluster wedding band for himself (TR 97). Whiles then took the rings to Ferguson's home and from there they took the rings to

Abe Martini, on South Main Street, Los Angeles, California. Abe Martini was to sell the rings for them (TR 97). The previous day Ferguson and Whiles attempted to locate Martini to inform him that they had some stuff to get rid of but that it hadn't come down from San Francisco as yet (TR 125).

On September 9, 1954, Morgan was arrested in Los Angeles, California, on suspicion of robbery. That evening Morgan was brought in and questioned by Officer Thomas Buckley, Robbery Division, City of Los Angeles Police Force (TR 36, 38, 39). Morgan stated to Officer Buckley that he, as well as Ferguson and Whiles, went to Alaska for the purpose of finding work (TR 38). However, Morgan testified at the trial that during the months of April, May, June and July of 1954, he was associated in business with one Lile and Camano and that during this period they were selling heavy equipment to a Mr. Lee (TR 186). That after learning there was a surplus of heavy equipment, namely, abandoned tractors in the area of Fairbanks, Alaska, he got together with Lile and decided to come up to Alaska. Thereafter Ferguson and Whiles decided they wanted to come to Alaska. He then contacted Lile to inform him that Ferguson and Whiles also wanted to come to Alaska (TR 187, 188). Lile stated to Special Agent Kintz that he had arranged with Morgan for him to go to Alaska to purchase some tractors for a sale to a client of theirs and that he gave Morgan $650.00 to come to Alaska (TR 74). Whiles testified that Morgan told him Lile knew a man dealing in black market gold in Alaska and

Lile would be willing to furnish the money to go to Alaska. Lile also told Morgan that they were to pick up the gold when the man got ready to leave Fairbanks with the gold in the back of his pickup truck (TR 222).

When asked by Officer Buckley on September 9, 1954, if he minded if the police searched his house, Morgan stated that he had no objection and handed Officer Buckley the key to his apartment (TR 56). Officer Buckley then tagged Morgan's key and sent Officer Joseph R. Klein to search Morgan's apartment. Officer Klein later returned with a letter (plaintiff's exhibit "G") which he had found in a drawer in Morgan's residence at 4725½ Lexington Avenue, Los Angeles, California (TR 57, 67). On December 13, 1954, Doyle G. Kintz, Special Agent, F.B.I., San Francisco Office, together with George Galloway, another Special Agent, interviewed Lile at his home in San Francisco. Their purpose in going to see Lile was to identify a man by the name of Joe White who had written a letter signed Joe White (TR 68, 69). After being shown a photostatic copy of plaintiff's exhibit "G", Lile admitted to the Special Agents that he had written the letter to his friend, Morgan, and also that he had signed the name of Joe White to the letter (TR 70, 73).

On the 9th day of September 1954, at approximately 7:30 a.m., after having received information that Martini was in possession of stolen property, Officers Buckley and Walker, as well as Sgt. Young, arrested Martini at 1513¼ or 1513½ West Pecos Boulevard,

Apt. #4, Los Angeles, California. At the time of the arrest, Officer Buckley secured a number of rings (plaintiff's exhibit "A") from a pocket of Martini's trousers and two other rings (plaintiff's exhibit "B") which were on top of a radio in Martini's apartment (TR 128, 129, 133, 134, 135).

On January 26, 1955, the grand jury for the Fourth Judicial Division, District of Alaska, returned an indictment charging John David Whiles, Thomas B. Morgan, Paul Ferguson and Joe White, aka, Thomas Robert Lile, with conspiring to commit an offense against the laws of the United States, 18 U.S.C.A. §2314, to-wit, conspiring to transport in interstate commerce stolen property of the value of more than five thousand dollars. The overt act alleged being the transportation of the stolen property from Fairbanks, Alaska, to Seattle, Washington.

On July 15, 1957, defendant Ferguson entered a plea of guilty in Los Angeles, California, pursuant to Rule 20, Federal Rules of Criminal Procedure.

On September 30, 1957, the Appellant and Morgan went on trial before a jury which on October 3, 1957, returned a verdict of guilty as to each defendant.

The Appellant received a sentence of one year, which was suspended. The Court placed him on probation, ordered him to pay a fine of $300.00 and one-half of the cost of the trial (Vol. 1 TR 49).

A motion for a new trial was denied and an appeal was taken to this Court.

QUESTIONS PRESENTED.

Whether there was substantial evidence from which the jury could find that the value of the stolen jewelry was $5,000.00.

Whether there was substantial evidence from which the jury could find that Appellant was a member of the conspiracy to transport in interstate commerce stolen jewelry having a value of $5,000.00.

Whether the conspiracy terminated in Seattle, Washington, or in Los Angeles, California.

ARGUMENT.

I.

THERE WAS SUBSTANTIAL EVIDENCE FROM WHICH THE JURY COULD FIND THAT THE VALUE OF THE STOLEN JEWELRY WAS $5,000.

On August 20, 1954, Douglas O. Maddux, owner of a jewelry store in Fairbanks, discovered that two boxes containing more than 83 individual rings or 40 sets of rings, consisting of wedding bands, diamond engagement and dinner rings, were missing from his store (TR 16).

He testified that the cost price was $4,300 or $5,300 and the market value of the stolen rings was just about double and would have been in retail a good $8,000 (TR 17). "Value" means the face, par or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities and money referred to in a single indictment shall constitute the value thereof. 18 U.S.C.A. § 2311.

Mr. McRoberts, the Chief Deputy United States Marshal, testified that in his report of investigation Mr. Maddux verbally identified the pictures of the rings and gave the full retail value of the missing rings as between $6,000 and $8,000 (TR 165). He further testified that this figure agreed with Identification 7 which was a copy of an inventory submitted to the City Police by Mr. Maddux (TR 81). Mr. Zaverl, the Chief of Police, testified that Identification 7 was the same as the record in his file (TR 161).

This testimony was more than a scintilla. It was substantial evidence which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Edison Co. v. Labor Board,* 305 U. S. 197, 229 (1938).

In *Woodard Laboratories v. United States,* 198 F.2d 995, 998 (9th Cir. 1952), this Court said:

> "The usual rule to be followed in determining the sufficiency of evidence to sustain a judgment is well settled. 'It is not for us to weigh the evidence or to determine the credibility of witnesses. The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it.' Glasser v. United States, 1942, 315 U.S. 60, 80, 62 S.Ct. 457, 469, 86 L.Ed. 680. See Banks v. United States, 9 Cir., 1945, 147 F.2d 628."

John Whiles, a co-conspirator, testified that Ferguson started calling off the numbers that were written on the price tags of these rings that were in the boxes and he wrote the numbers down (TR 93), and the best he could remember it was $5,120, or

$5,210 or $5,220, somewhere along in there. At first appearance this conflicts with Mr. Maddux's testimony, but the jury could have found that he was mistaken or his memory was faulty on this particular point or that all the rings did not contain tags. At least three of the rings recovered in Los Angeles did not have tags on them (TR 18, 23). The question of value was properly submitted to the jury and their finding is sustained by the record.

Appellant states in his brief that the trial court erred in failing to withdraw the case from the jury, evidently meaning the court should have granted a motion for judgment of acquittal, because the Government failed to prove that the jewelry transported in interstate commerce possessed a value of $5,000. He apparently makes no distinction between a conspiracy to commit an offense against United States as charged in the indictment as a violation of 18 U.S.C.A. § 371, and the substantive offenses of transportation of stolen goods in interstate commerce a violation of 18 U.S.C.A. § 2314.

It was not necessary for the Government to prove that $5,000 worth of stolen jewelry was actually transported from Fairbanks, Alaska, to Los Angeles, California.

In the case of *Carlson v. United States,* 187 F.2d 366, 369 (10th Cir., 1951) the Court said:

> "To establish the conspiracy charge in count one, it was necessary to prove by competent evidence that appellants, by concerted actions, agreements and understandings, undertook to fraudulently

obtain wheat in Oklahoma of a value of $5,000.00 or more and transport the same in interstate commerce, and that an overt act in furtherance of the conspiracy was committed by one of the conspirators. It was not necessary, however, to prove that wheat of a value of $5,000.00, or more, or that any wheat in fact was fraudulently obtained and transported. The offense was complete when the unlawful agreement was formulated and an overt act in furtherance thereof was performed. Nor was it necessary that the overt act constitute the crime that was the subject of the conspiracy or even that it itself be a criminal act. Although innocent in itself, an overt act is sufficient to complete the crime of conspiracy if performed in furtherance thereof. Homes v. United States, 8th Cir., 134 F.2d 125; Bergen v. United States, 8th Cir., 145 F.2d 181, and cases cited. The overt act merely manifests that the conspiracy is at work. United States v. Offutt, 75 U.S.App. D.C. 344, 127 F.2d 336."

However, the evidence does support the fact that stolen jewelry of the value of more than $5,000 was transported to Seattle, Washington, and then mailed to the Appellant in San Francisco, California.

John Whiles testified that Morgan and Ferguson had stolen the rings from the Maddux Jewelry Store and they returned to their dormitory room where Morgan placed them on a piece of brown twine or string (TR 93). Then, Morgan placed the string of jewelry in the wall until the morning of August 21, 1954, when they left on the Pan American plane for Seattle, Washington. At that time Morgan removed the string

of rings and placed them on his belt down inside his trousers and carried the jewelry in this manner from Fairbanks to Seattle (TR 95).

At Seattle, Morgan put the rings in a box and mailed them to the Appellant in San Francisco, California (TR 95). The letter (TR 177, 178) that the Appellant wrote to Morgan explains how the rings got to Los Angeles where Whiles received them from Morgan who had been given them by Lile who was also present at Morgan's house. The rings which were still on the brown string were taken to Abe Martini, who was to sell them (TR 96, 97).

On September 9, 1954, Officer Buckley of the Los Angeles Police Department recovered from Abe Martini part of the stolen rings still attached to the brown string (TR 128, 129) along with others that Mr. Maddux could not definitely identify with the exception of three rings. The value of these recovered rings with blue tags was $2,102.50 less tax (TR 80). Simply because the police officers in Los Angeles did not recover all the stolen jewelry does not mean that the jewelry in fact was not transported.

Mr. Maddux testified that the recovered rings were the least expensive and even in a pawn shop you couldn't get much for them (TR 31). The expensive jewelry could have been sold in San Francisco or Martini, the receiver in Los Angeles, could have disposed of them before they were recovered by the police on September 9, 1954.

Therefore, in considering the evidence in the light most favorable to the Government *(Bateman v.*

United States, 212 F.2d 61, 70 (9th Cir., 1954); *Schino v. United States,* 209 F.2d 67, 72 (9th Cir., 1953) cert. denied 347 U.S. 937 (1954)), the trial court did not err in denying Appellant's motion for judgment of acquittal.

II.

THERE WAS SUBSTANTIAL EVIDENCE FROM WHICH THE JURY COULD FIND THAT APPELLANT WAS A CO-CONSPIRATOR.

It has been held that proof of a conspiracy may be by circumstantial evidence and often by overt acts alone. *(Marino v. U. S.,* 91 F.2d 691, 698 (9th Cir., 1937); *Blumenthal v. U. S.,* 158 F.2d 883, 889 (9th Cir., 1946) affirmed 332 U.S. 539 (1948); *Glasser v. U. S.,* 315 U.S. 60 (1942).) The existence of a conspiracy may be inferred from the acts of persons which are done in pursuance of an apparent criminal purpose. *(Nye & Nissen v. U. S.,* 168 F.2d 846, 852 (9th Cir., 1948); *U. S. v. Migliorino,* 238 F.2d 7, 9 (3rd Cir., 1956).) In the case of *Poliafico v. U. S.,* 237 F.2d 97 (6th Cir., 1956) the Court states at page 104 of its opinion:

> "Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and a collocation of circumstances."

and further at page 106 of its opinion the Court stated:

> "Almost always, the crime is a matter of inference, deduced from the acts of the persons ac-

> cused, which are done in pursuance of an apparent criminal purpose. Stack v. United States, 9th Cir., 27 F.2d 16; Pearlman v. United States, 9th Cir., 20 F.2d 113. The agreement may be shown by a concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose. Marino v. United States, 9th Cir., 91 F.2d 691 . . ."

See also *Blumenthal v. U. S.,* supra, 158 F.2d 883, 889.

There was substantial evidence from which the jury could find that on or about the 20th day of August, 1954, Thomas B. Morgan, Paul Ferguson and John David Whiles conspired in violation of 18 U.S.C.A. § 371, to commit an offense against the laws of the United States, more particularly 18 U.S.C.A. § 2314. There was evidence that on the morning of August 18, 1954, Morgan and Ferguson returned to their lodgings in Fairbanks, Alaska, with two trays of diamond rings which were concealed under Ferguson's shirt (TR 92, 100). They later admitted to Whiles that they had stolen the diamond rings from Maddux's Jewelry Store, Fairbanks, Alaska (TR 93). Morgan then strung the stolen rings on a twine and Ferguson subsequently threw the empty ring trays on top of a roof building in Fairbanks (TR 95). Whiles testified that Morgan and Ferguson told him that his "cut" was to be one-third of the stolen diamond rings (TR 225). On August 20, 1954, Douglas O. Maddux, owner of Maddux Jewelry Store discovered that two boxes containing more than 83 individual rings, having a value of over $5,000, were missing from his store (TR 13,

16, 17). On May 6, 1955, Donald T. Sullivan, Special Agent, F.B.I., recovered the empty ring boxes from the roof where they had been thrown by Ferguson (TR 147, 149, 150). On August 21, 1954, Morgan, Ferguson and Whiles left Fairbanks together by plane to Seattle, Washington. Morgan had hung the rings inside of his trousers and carried them out of Fairbanks to Seattle in this manner (TR 95).

Further, there was evidence that after their arrival in Seattle, Morgan mailed the stolen jewelry to Lile in San Francisco (TR 95, 96). The evidence also disclosed the attempts of Morgan, Ferguson and Whiles to dispose through one Martini, of the stolen jewelry in Los Angeles (TR 96, 125).

The jury could find from the circumstantial and direct evidence as to these acts of Morgan, Ferguson and Whiles, done in pursuance of an apparent criminal purpose, that they had conspired to transport the stolen jewelry in interstate commerce.

In the case of *Poliafico v. U. S.,* 237 F.2d 97 (6th Cir., 1956), the Court at page 104 of its opinion commented as follows:

> "A conspirator may join at any point in the progress of the conspiracy and be held responsible for all that may be or has been done; Braverman v. U. S., 6th Cir., 125 F.2d 283 . . . ; and the foregoing applies to those appellants who did not participate in the formation of the conspiracy, but joined it at various times thereafter, . . ."

In *Marino v. U. S.,* 91 F.2d 691 (9th Cir., 1957), this Court stated at page 696:

> "In the situation where a conspiracy has been formed, the joinder thereof by a new member does not create a new conspiracy, does not change the status of the other conspirators, and the new member is as guilty as though he was an original conspirator . . .
>
> "One who commits an overt act with knowledge of the conspiracy is guilty, even though he is absent when the crime, which is the object of the conspiracy, is committed. Such person's knowledge as to the scope of the conspiracy, may be limited, and he need not know all the details of the plan or the operations. Knowledge of membership in the conspiracy, the part played by each of the members . . . is immaterial. He must know the purpose of the conspiracy, however, otherwise he is not guilty."

This Court stated at page 852 of its opinion in the case of *Nye & Nissen v. U. S.,* 168 F.2d 846 (9th Cir., 1948) that:

> "Once the existence of a conspiracy is clearly established, slight evidence may be sufficient to connect a defendant with it. Meyers v. United States, 6 Cir., 94 F.2d 433, certiorari denied 304 U.S. 583 . . . ; Phelps v. United States, 8 Cir., 160 F.2d 858."

See also *Poliafico v. U. S.,* supra, 237 F.2d 97, 104.

The evidence was more than slight from which the jury could find beyond a reasonable doubt that Appellant, Thomas R. Lile, joined the August, 1954, conspiracy entered into by Morgan, Ferguson and

Whiles in Fairbanks to transport stolen jewelry of the value of $5,000 in interstate commerce.

The jury had before it considerable evidence pertaining to the association of Lile with Morgan, Ferguson and Whiles prior to their arrival in Fairbanks on August 15 or 16, 1954. Morgan and Lile, during the months of April, May, June and July, 1954, were associated in business (TR 185, 186, 187). Whiles testified that Lile initiated the trip to Fairbanks for the purpose of obtaining black market gold, and that Lile helped finance the trip up to Alaska in that he gave Morgan $500.00 to purchase a 1950 Nash. Later in Yosemite National Park, Lile gave Morgan an additional $100.00, as Morgan was in need of funds throughout the entire period in question (TR 189).

Pertaining to the time Whiles, Morgan and Ferguson were in Fairbanks, Whiles testified that on or about the 17th or 18th of August, 1954, Morgan telephoned Lile from Fairbanks. While in Fairbanks, Morgan also sent a telegram to Lile in San Francisco asking for an additional $400.00 (TR 75, 92).

After Morgan, Ferguson and Whiles had arrived in Seattle from Fairbanks, on their return to Los Angeles with the stolen jewelry, Morgan again called Lile in San Francisco. Morgan informed Lile that he needed $400.00 and certain jewelry had been sent to him at the Greyhound Bus Depot in San Francisco (TR 75). Special Agent Kintz testified that Lile told him he had sent an additional $400.00 to Morgan in Seattle, and that he had used a fictitious name to

wire the money to Morgan in care of a downtown Western Union Office in Seattle (TR 75).

Morgan testified that after his arrival in Seattle from Fairbanks, he sent telegrams to Lile in Yosemite National Park and to San Francisco asking Lile for $400.00 (TR 209). Morgan also testified that he did receive $400.00 from Lile, the latter having wired the money to a Western Union Office in downtown Seattle (TR 205).

Whiles also testified that when present in a hotel room in Seattle occupied by Morgan and Ferguson, he observed Morgan put the stolen rings in an old plastic electric shaver box in preparation for mailing and that Morgan at the time stated he was going to send the rings to Lile. This was the last time Whiles saw the electric shaver box (TR 95, 96). Morgan testified to mailing a package to Lile from Seattle after arriving from Fairbanks, but contended the package did not contain any jewelry (TR 215). Whiles gave testimony that as Morgan, Ferguson and himself were driving out of Seattle on their way to San Francisco, Morgan went into a post office (TR 96). Special Agent Kintz testified at the trial that Lile stated he had picked up two packages from the Greyhound Bus Depot in San Francisco, and that one of the packages contained a box with rings (TR 75).

There was evidence that approximately three to five days after they had arrived in Los Angeles, Ferguson and Whiles went to Morgan's home to pick up the stolen rings. When they arrived at Morgan's home Lile was there, and that it was Lile who went and got

the rings and then gave them to Morgan who in turn gave them to Whiles (TR 96). On the previous day Whiles and Ferguson went to Martini's to let him know they had some "stuff" to get rid of but that it had not come down from San Francisco as yet (TR 125).

After Morgan's arrest on September 9, 1954, a letter (plaintiff's exhibit "G") was found in a drawer in Morgan's apartment in Los Angeles (TR 36, 38, 39, 57, 65, 67). Special Agent Kintz testified that on December 13, 1954, in San Francisco, Lile admitted that he had written plaintiff's exhibit "G" to his friend Morgan and also that he had signed the name Joe White to the letter (TR 70, 73).

The letter which Lile sent to Morgan reads as follows:

"DESTROY - this - LETTER

"I would like to swap the bat set I got from you for one of these elict.

"San Francisco
Calif
Aug. 25, 1954

"Friend Tom:

"Rec. your call last night have been neglecting business waiting for you to come by.

"You know my friend I never approved of the trip up, and how sure I was it would be a failure, you just forced it onto me.

"Now my deal was we all put up 5 each as expense, well I put up my 5 plus another. You guaranteed me we would get the jar any way,

well if you had took my advice on how to handle it we would have got it most likely.

"Now after I put up the dough you fellows are still working on your own, I am to receive and sell the stuff for free.

"Your big expense was the car well who gets the car.

"You see what I am geting at is, I don't like to do things against my wishes, then get no breaks at all.

"If you had took my advice six weeks ago and sent a camper up to camp at the gate and telephoned when the ice freeze started south, you could have met the truck and been a couple hundred pounds better off. No you are nervious and to many irons in the fire.

"I will be down there the very first of the week and will bring everything you have here. the last package arrived in a little bad shape, but I don't think it had been opened. I took it to a friend of mine he figured 390 points and offered 400 for them. he got a kick out of the prices on them, he sais, the jewelry protection association makes it impossible to sell them through a store as every police, and assoc. detective plus the hundreds of salesmen watch so close, no one would take a chance. the only safe way is to take out and melt everything. Any way the market is flooded with that junk. the stuff in demand is over one.

"I will bring this down to you and you can pay me what you owe me and take it or else call me and I will sell it here.

"The big boy is very active buying and selling and is good for 7 if handled right. I don't know

yet what the score is on our friend but expect to learn something when I see him, so stay away from him I dont want any more failures.

"As ever

/s/ Joe White"

(This letter was properly admitted into evidence only as to Appellant. See *Delli Paoli v. U. S.,* 352 U.S. 232, 237 (1957).)

Analysis of the evidence outlined above discloses that there was more than slight evidence to connect Lile with the conspiracy to transport the stolen jewelry in interstate commerce. In view of the evidence as outlined above the jury could have found that Lile joined and then aided or assisted in the furtherance of the conspiracy, having knowledge of the purpose of the conspiracy, although he may not have known all of the details of the conspiracy, or the parts played by Morgan, Ferguson and Whiles in the conspiracy.

The letter which Lile wrote to Morgan, shortly after Morgan's return to Los Angeles from Fairbanks, indicates that Lile knew prior to receipt of the packages therein mentioned that he was being sent stolen jewelry from a source outside of the State of California as part of the conspiracy. The language "I don't like to do things against my wishes, then get no breaks at all" clearly demonstrates that there was consent on Lile's part. The letter taken in conjunction with the fact that Lile was aware Morgan was in need of money shows that Lile was aware that Morgan was sending him stolen jewelry. From the letter, While's testi-

mony as to Morgan's preparing the jewelry for mailing from Seattle to Lile in San Francisco, the circumstantial evidence as to the mailing of the jewelry to Lile from Seattle and Morgan's telephone conversation with Lile from Seattle, the jury could have found that Lile received the stolen jewelry with prior knowledge of the purpose of the conspiracy and in furtherance of the conspiracy.

In *U. S. v. Crimmins,* 123 F.2d 271 (2nd Cir. 1941), a case which involved a conspiracy to transport in interstate commerce stolen securities, Judge Hand wrote at page 273 of his opinion:

> "In the case at bar it might have been an implied term of the agreement that Crimmins should take bonds coming from any source; if it had been, he could have been found guilty of the conspiracy, for such an agreement would have dealt with the place of the theft, even though it did no more than provide that the place made no difference. A continued indifference to the source of the bonds, coupled with knowledge that in some cases they had come from beyond the state, would have been evidence of such an agreement . . ."

See also *Baugh v. U. S.,* 27 F.2d 257, 260-261 (9th Cir., 1928).

From the evidence as set forth above the jury could find that Lile also aided or assisted in furtherance of the conspiracy, with knowledge of the purpose of the conspiracy when he wired under a fictitious name the $400.00 to Morgan in Seattle. There was also circumstantial evidence of Lile's transporting the stolen

jewelry from San Francisco to Morgan's home in Los Angeles which tied in with Lile's letter to Morgan as it pertained to the bringing of the jewelry by Lile to Los Angeles from San Francisco. See *Lutwak v. U. S.,* 344 U.S. 604, 618 (1953).

It was not necessary for the evidence to show that Lile had a financial interest in the conspiracy. His interest may have been that of seeking by action, to make the venture succeed. Lile's knowledge or lack of knowledge of the division of the spoils is immaterial. The stake is in the success of the enterprise (*Marino v. U. S.,* supra, 91 F.2d 691, 696; *Poliafico v. U. S.,* supra, 237 F.2d 97, 107).

Viewing the evidence and the inferences to be drawn therefrom in the light most favorable to the appellee, there was substantial evidence to support the jury's verdict finding Thomas R. Lile guilty of conspiracy (*Nye & Nissen v. U. S.,* supra, 168 F.2d 846, 851; *Schino v. U. S.,* supra, 209 F.2d 67, 72, cert. denied, 347 U.S. 937 (1954); *Penosi v. U. S.,* 206 F.2d 529, 530 (9th Cir., 1953); *Bateman v. U. S.,* supra, 212 F.2d 61, 70-71).

III.

THE CONSPIRACY DID NOT TERMINATE IN SEATTLE, WASHINGTON.

It has been held that once a conspiracy has been established it is presumed to continue until the contrary is established (*Marino v. U. S.,* supra, 91 F.2d 691, 695; *Coates v. U. S.,* 59 F.2d 173, 174 (9th Cir., 1932)). A conspiracy continues as long as the evidence shows an intention to continue it (*Bellande v. U. S.,* 25 F.2d 1, 2 (5th Cir., 1928)), or until the consummation of the purpose of the conspiracy (*Nyquist v. U. S.,* 2 F.2d 504, 505 (6th Cir., 1924)). The termination of a conspiracy need not coincide with the completion of the crime nor even with the arrest of a conspirator (*Ferris v. U. S.,* 40 F.2d 837 (9th Cir., 1930)).

There was substantial evidence in the record to indicate that the conspiracy was not limited to the transportation of the stolen jewelry from Fairbanks to Seattle. The evidence clearly indicated that the conspirators intended to transport the jewelry in interstate commerce from Fairbanks, Alaska, to Los Angeles, California. The allegation of the overt act in the indictment did not limit the scope or object of the conspiracy to transportation in interstate commerce from Fairbanks to Seattle only. This Court stated in *Baugh v. U. S.,* 27 F.2d 257 (9th Cir., 1928) at page 260 of its opinion:

> "Ordinarily, it is true, the averment of an overt act is not intended to be a statement of the object of the conspiracy . . ."

See also: *Johns v. U. S.,* 195 F.2d 77, 78 (5th Cir., 1952).

CONCLUSION.

It is respectfully submitted that the judgment entered by the District Court should be affirmed.

Dated, Fairbanks, Alaska,
March 14, 1958.

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(Appendix Follows.)

Appendix.

Appendix

UNITED STATES CODE ANNOTATED

18 §371. *Conspiracy to commit offense or to defraud United States.* If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

UNITED STATES CODE ANNOTATED

18 §2314. *Transportation of Stolen goods, securities, monies, or articles used in counterfeiting.* Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country. June 25, 1948, c. 645, 62 Stat. 806, amended May 24, 1949, c. 139, § 45, 63 Stat. 96.